

the payment of the costs of the proceedings and the execution of a bond in the sum of \$600, in conformity with section 10 of the act, conditioned in part that the product should be relabeled under the supervision of a representative of this department as imitation oil of birch.

C. F. MARVIN, *Acting Secretary of Agriculture.*

6809. Adulteration and misbranding of olive oil. U. S. * * * v. Christ Paraskevopolus (National Importing Co.). Tried to the court and a jury. Verdict of guilty. Fine, \$603. (F. & D. No. 9235. I. S. Nos. 3861-3862-p.)

On March 5, 1919, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Christ Paraskevopolus, trading as the National Importing Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on January 31, 1918, and February 1, 1918, from the State of New York into the State of Massachusetts, of quantities of an article, labeled in part, respectively, "Finest Quality Olive Oil $\frac{1}{4}$ Gallon Net," and "Olive Oil Speciality Lucca 1 Gallon Net," which was adulterated and misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed it to consist almost wholly of cottonseed oil and to be short volume.

Adulteration of the article in each shipment was alleged in the information for the reason that a substance, to wit, cottonseed oil, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength, and had been substituted in part for pure olive oil, which the article purported to be.

Misbranding of the article in the shipment on January 31, 1918, was alleged for the reason that the statements, to wit, "Finest Quality Olive Oil, Extra Pure, Termini Imerese, Sicilia-Italia, $\frac{1}{4}$ Gallon Net, Guaranteed Absolutely Pure," borne on the cans containing the article, regarding it and the ingredients and substances contained therein, were false and misleading in that they represented that the article was pure olive oil, that it was a foreign product, to wit, an olive oil produced in Sicily, in the kingdom of Italy, and that each of said cans contained not less than $\frac{1}{4}$ gallon net of the article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was pure olive oil, that it was a foreign product, to wit, an olive oil produced in Sicily, in the kingdom of Italy, and that each of said cans contained $\frac{1}{4}$ gallon net of the article, whereas, in truth and in fact, it was not pure olive oil, and was not a foreign product, to wit, an olive oil produced in Sicily, in the kingdom of Italy, and each of said cans did not contain $\frac{1}{4}$ gallon net of the article, but was a mixture composed in part of cottonseed oil, and was a domestic product, to wit, a product manufactured in the United States of America, and each of said cans contained less than $\frac{1}{4}$ gallon net of the article; and for the further reason that it was a mixture composed in part of cottonseed oil prepared in imitation of pure olive oil, and was offered for sale and sold under the distinctive name of another article, to wit, pure olive oil.

Misbranding of the article in the shipment on February 1, 1918, was alleged for the reason that the statements, to wit, "Olive Oil, Lucca, 1 Gallon Net," borne on the cans containing the article, regarding it and the ingredients and substances contained therein, were false and misleading in that they represented that the article was olive oil and that it was a foreign product, to wit, an olive oil produced in Lucca, in the kingdom of Italy, and that each of said cans contained one gallon net of the article, and for the further reason that it

was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was olive oil, and that it was a foreign product, to wit, an olive oil produced in Lucca, in the kingdom of Italy, and that each of said cans contained one gallon net of the article, whereas, in truth and in fact, it was not olive oil and was not a foreign product, to wit, an olive oil produced in Lucca, in the kingdom of Italy, and each of said cans did not contain one gallon net of the article, but was a mixture composed in part of cottonseed oil, and was a domestic product, to wit, a product manufactured in the United States of America, and each of said cans contained less than one gallon net of the article; and for the further reason that it was a mixture composed in part of cottonseed oil prepared in imitation of olive oil, and was offered for sale and sold under the distinctive name of another article, to wit, olive oil.

Misbranding of the article in each shipment was alleged for the further reason that it was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On June 6, 1919, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Knox, *D. J.*):

Gentlemen of the jury, in this case the defendant, who bears a lengthy Greek name which I shall not attempt to pronounce, is charged with trading and doing business under the name of the National Importing Company; and he is charged here with having sent a quantity of oil, which in fact was cottonseed oil, flavored with olive oil, from the City of New York to Boston, Massachusetts, to a merchant from that city who has testified in court.

The statutes of the United States provide that:

"Whoever ships in interstate commerce adulterated food products or who ships food products which are misbranded or who ships food products in interstate commerce containing false and misleading labels, and upon which is not set forth accurately the weight and contents of the package" is guilty of an offense under the Food and Drugs Act.

This defendant is therefore charged by the Government in this case with having shipped adulterated food products; and that he has misbranded his food products; that the label does not contain the net weight of the food products contained therein.

It has been argued before you that the Government by regulations that have been established by the Department of Agriculture allows a variation of weight in the contents of food packages. That is, that such an allowance is to be made and is recognized by the Government where the variation was more or less trifling and where the variation of weight of contents is in excess of the weight marked on the package along with instances where it has some with less. That is, that there should be a reasonable variation that would be liable to occur in the ordinary routine of business.

The Government in this case takes the position that there is a shortage running from five to ten per cent in each of these shipments of oil that have been called to your attention, and that therefore the defendant comes within the purview of the statute because there is no variation in favor I might say of the public or of the consumer of this oil who purchased it upon the assumption that the contents, either quarts or gallons, is such, as the case may be.

The oil is admittedly 90 per cent, approximately, cottonseed oil and is flavored with approximately 10 per cent of olive oil. The cans in which the oil is shipped have been put in evidence before you, and it would appear from these cans, at least it would to me, to have the appearance—that is the cans—to make you believe—but that of course is for you to determine—that they contained olive oil.

The purpose of the Food and Drugs Act was to protect the public. In the very nature of affairs, when we go to a grocery store to buy food of different sorts and different supplies, we have got to depend more or less upon the representations that are made to us as to the contents of packages of this kind and of course we have to rely upon those more or less, and Congress has assumed that the public relies more or less upon the label upon the container, and consequently has passed this regulation. And its purpose is that the

dishonest person shall not deceive the public by their false labels, false notations of weight or by the sale of adulterated foodstuffs; and in the event that merchants undertake so to deceive, that he who does that subjects himself or themselves to liability under the law.

This law is rather drastic in its terms, insofar as it does not require a specific criminal intent upon the part of the defendant to be shown. All that it is necessary for the Government to do in a prosecution such as this is to show that the person knowingly did or committed the prohibited act. Therefore, did he, the defendant here, ship the goods in question knowing that they were adulterated and containing labels which were calculated to mislead and deceive the public? And did he put upon the cans false weights which did not vary in favor of the public or which were not higher to a greater or less extent than the amount marked on the packages?

If from all the evidence in the case you find that the defendant has made these shipments, and you may so find beyond a reasonable doubt, then your verdict should be guilty. If he did not so make the shipments, your verdict will be not guilty.

You have, however, the evidence in the case here upon the part of the defendant's own witnesses that when this particular order came in, or rather was called to their attention, the order was called to the attention of the defendant, and that therefore his attention was drawn to it and that thereafter this shipment went forward. The defendant seeks to justify what he has done by the assertion that there was pasted across each of these cans a narrow paper strip which contained the statement that the contents of the package was cottonseed oil flavored with olive oil. You have heard the testimony of the Government inspector that when he saw these packages in Boston, there was no such strip upon any of the cans examined by him. You have heard the testimony of the consignee of the packages in question who said that he examined each of the cans and found no such strips upon any of the cans.

Now even if you should find that the strip in the first instance was placed upon the can then you can consider whether or not it was done as a mere subterfuge with the expectation and purpose that it would be taken off and that the oil was placed in these cans for the purpose of deceiving and misleading the public in any event. If you feel that the labels are of such a character that such a situation may reasonably be developed and that that situation was in the mind of the shipper so as to ultimately deceive and mislead a person who should ultimately purchase these cans, then you may find the defendant guilty.

He, of course, has the presumption of innocence with him until the evidence adduced in the case has determined in your mind that he is guilty beyond a reasonable doubt. A reasonable doubt is not a capricious doubt, one born of reluctance on the part of a jury to perform an unpleasant task, but is a doubt based upon and growing out of some lack of the evidence which leaves you short of a moral certainty of the defendant's guilt. If you have an abiding conviction of the fact that the defendant did ship the goods in the manner and form as charged by the Government there should be no hesitancy upon your part in returning a verdict of guilty.

Take the case, gentlemen.

Mr. CELLAR. I request your Honor to charge that if the word "compound" is on the tin that it is not necessary to state the proportion of the ingredients.

The COURT. Not necessary to state the proportion of the ingredients as I understand it.

Mr. CELLAR. I ask your Honor to charge that the defendant would not be responsible for anything that the Stellar Macaroni Company have done.

The COURT. I instruct them—there you are back to the original proposition, that if it be true that the defendant placed the oil in the cans such as has appeared here, it is a question for them to say what his intent was. You may in that connection consider that letter which went into evidence before you, gentlemen.

Mr. CELLAR. I ask your Honor to charge that if the jury find that the strips were placed on the can they may further find that those strips may have been, in their mind, a sufficient notice to the consuming public that there was no misbranding.

The COURT. You may consider it, gentlemen. But you may also consider in that connection the narrowness of the strips as they were displayed upon the can.

Mr. CELLAR. I ask your Honor to charge that the statutes do not prescribe any specified form or manner of misbranding.

The COURT. I believe that is true.

The jury thereupon retired, and after due deliberation returned into court with a verdict of guilty, and the court thereupon imposed a fine of \$603.

C. F. MARVIN, *Acting Secretary of Agriculture.*

6810. Misbranding of Cal-Sino and Antiseptine. U. S. * * * v. Cal-Sino Co., a corporation. Plea of guilty. Fine, \$100 and costs. (F. & D. No. 9236. I. S. Nos. 3378-p, 3380-p.)

On October 16, 1919, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Cal-Sino Co., a corporation, Baltimore, Md., alleging shipment on or about March 23, 1918, and March 12, 1918, by said company, in violation of the Food and Drugs Act, as amended, from the State of Maryland into the State of Virginia, of articles labeled in part "Antiseptine" and "Cal-Sino," which were misbranded.

Analysis of a sample of "Antiseptine" by the Bureau of Chemistry of this department showed it to be a powder containing large amounts of salts of zinc and lead and a small amount of a salt of copper. Sulphates and acetates were present. The mixture appeared to be composed of about 48 per cent anhydrous zinc sulphate with about an equal amount of lead acetate, together with a small amount of copper acetate.

An analysis of "Cal-Sino" showed it to be a hydro-acetic acid solution containing about 15 grams of solid material dissolved in 100 cc. Solid material is principally ammonium chlorid with trace of camphor and plant extract, probably derived from blood root.

It was alleged in substance in the information that the "Antiseptine" was misbranded for the reason that certain statements appearing on the labels of the cartons and envelopes falsely and fraudulently represented it as a treatment, specific, and cure for fistulae, and effective as a specific for fistulae, when, in truth and in fact, it was not.

It was alleged in substance that the "Cal-Sino" was misbranded for the reason that certain statements appearing on the labels of the cartons and bottles falsely and fraudulently represented it as a treatment, remedy, and cure for distemper, strangles, colts' ailment, shipping cold, heaves, and broken wind, when, in truth and in fact, it was not.

On October 16, 1919, the defendant company entered a plea of guilty to the information, and the court imposed a fine of \$100 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

6811. Adulteration and misbranding of olive oil. U. S. * * * v. 192 Gallons and 288 Quarts of Olive Oil. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 9280. I. S. Nos. 16028-r, 19426-r. S. No. E-1101.)

On August 31, 1918, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 192 gallons and 288 quarts of olive oil, consigned by M. Campolieti, New York, N. Y., remaining unsold in the original unbroken packages at Tampa, Fla., alleging that the article had been shipped on or about July 3, 1918, and transported from the State of New York into the State of Florida, and charging adulteration and misbranding in violation of the Food and Drugs